



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2005

Mr. Richard J. McGillivray
Assistant General Counsel
Texas Workers' Compensation Commission
7551 Metro Center Drive, Suite 100, MS-4D
Austin, Texas 78744

OR2005-01455

Dear Mr. McGillivray:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 218709.

The Texas Workers' Compensation Commission (the "commission") received a request for "the [Medical Quality Review Panel ("MQRP")] billings and payments of the MQRP doctors since January 2003 to date," specifically to include identification numbers of members of the MQRP. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the requested information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. You inform us that the information at issue is maintained by the commission in connection with investigations pursuant to Texas

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Labor Code §§413.002, 413.0511, and 413.0512. Section 413.0513 of the Labor Code provides in part:

(a) Information collected, assembled, or maintained by or on behalf of the commission under Section 413.0511 or 413.0512 constitutes an investigation file for purposes of Section 402.092 and may not be disclosed under Section 413.0511 or 413.0512 except as provided by that section[.]

Labor Code § 413.0513(a). Section 402.092, which governs release of investigation files, provides in part:

(a) Information maintained in the investigation files of the commission is confidential and may not be disclosed except:

- (1) in a criminal proceeding;
- (2) in a hearing conducted by the commission;
- (3) on a judicial determination of good cause; or
- (4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States.

(b) Commission investigation files are not open records for purposes of Chapter 552, Government Code.

....

(d) For purposes of this section, "investigation file" means any information compiled or maintained by the commission with respect to a commission investigation authorized by law.

Labor Code § 402.092(a), (b), (d).

Based on your representation that the information at issue is maintained in connection with investigations conducted pursuant to sections 413.0511 and 413.0512 of the Labor Code, we find that this information is subject to section 402.092 of the Labor Code. *See* Labor Code § 413.0513(a). Pursuant to section 402.092, this information is confidential and may not be released unless one of the listed exceptions applies. *Id.* § 402.092(a). You inform us that none of the exceptions found in section 402.092 apply in this instance. We therefore agree that the information at issue is confidential under section 402.092 of the Labor Code and must be withheld pursuant to section 552.101 of the Government Code. The remaining

information must be released to the requestor. As our ruling is dispositive, we need not consider your remaining claimed exception.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 218709

Enc. Submitted documents

c: Mr. Bill Aleshire
Riggs & Aleshire
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(w/o enclosures)